

E-FILED 4/19/07

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CONNECTU LLC,

Plaintiff,
v.

MARK ZUCKERBERG, et al.,

Defendants.

Case No. C07-80055MISC RMW (HRL)
C07-80056MISC RMW (HRL)
C07-80057MISC RMW (HRL)
C07-80058MISC RMW (HRL)

[D. Mass. Case No. C07-10593 DPW]

**INTERIM ORDER ON PLAINTIFF'S
MOTIONS TO COMPEL DISCOVERY
FROM NONPARTIES**

The underlying action, filed in the District Court for Massachusetts, concerns a dispute over the genesis of the idea for the social networking site Facebook.com. The plaintiff in the Massachusetts action has filed four miscellaneous actions in this court seeking an order compelling production of documents responsive to four subpoenas that it served in 2005 and 2006 on certain nonparty investors who are located in this District.¹ Only one of the motions to compel has been fully briefed.

The original underlying suit, C04-11923 DPW, was recently dismissed by District Judge Douglas Woodlock for lack of jurisdiction. However, Judge Woodlock noted that the dismissal was without prejudice, that re-filing was contemplated, and that proceedings (including discovery) should pick up where they left off once a new action was filed. Plaintiff promptly filed a new complaint, C07-10593 DPW.

¹ The nonparties are James Breyer, Accel Partners, Meritech Capital Partners, and Greylock Partners.

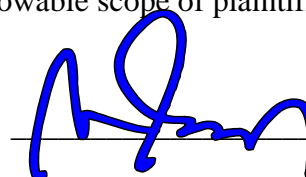
While the jurisdictional issue was being decided, Magistrate Judge Robert Collings of the Massachusetts District Court administratively denied, without prejudice, several of plaintiff's pending motions to compel discovery from defendants. This court presumes that, as the newly filed case goes forward, Magistrate Judge Collings will decide those motions on their merits.

The briefing submitted in connection with C07-80056MISC RMW (the motion to compel discovery from nonparty Greylock Partners) indicates that the motions to compel pending in Massachusetts seek discovery that substantially overlaps and in some cases duplicates the discovery sought in the Northern District of California pursuant to these nonparty subpoenas. So as not to risk inconsistent rulings, this court STAYS the nonparty subpoenas and administratively terminates the associated discovery motions. Once the Massachusetts court rules on the related discovery issues, plaintiff may renote its four discovery motions before this court on the normal law and motion calendar.

Parenthetically, this court is of the opinion that the Massachusetts District Court, with its greater familiarity with the core factual and legal issues in the underlying case, would likely be a better forum to rule on the allowable scope of discovery from the four nonparties located in this District. This is particularly so where, apparently, plaintiff is looking for some of the same discovery from the defendants themselves as it is from the four nonparties. It is this court's belief that, if they choose to submit to the jurisdiction of the Massachusetts court, the four nonparties could move there for a protective order under Federal Rule of Civil Procedure 26(c) and in that manner obtain a ruling on the allowable scope of plaintiff's discovery from them.²

IT IS SO ORDERED.

Dated: April 19, 2007



HOWARD R. LLOYD

UNITED STATES MAGISTRATE JUDGE

² This court considered, but rejected as doubtful, whether it has the authority to "transfer" the four discovery motions to Massachusetts. Contrast, e.g., *United States v. Star Scientific, Inc.*, 205 F.Supp.2d 482 (D. Md. 2002) with *In re Sealed Case*, 141 F.3d 337 (D.C. Cir. 1998).

THIS SHALL CERTIFY THAT A COPY OF THIS ORDER WILL BE SENT TO:

Neel Chatterjee nchatterjee@orrick.com, kmudurian@orrick.com

Monte M.F. Cooper mcooper@orrick.com, adalton@orrick.com; shart@orrick.com

George Hopkins Guy , III hopguy@orrick.com, msagmit@orrick.com; adalton@orrick.com

Steven M. Schatz sschatz@wsgr.com

Meredith Hope Schoenfeld meredith.schoenfeld@finnegan.com, pat.hart@finnegan.com;
karen.reimer@finnegan.com

Karen Thomas Stefano kstefano@wsgr.com, bhickman@wsgr.com

Theresa Ann Sutton tsutton@orrick.com, aako-nai@orrick.com; ygreer@orrick.com

Dated: April 19, 2007

/s/ JMM

Chambers of Magistrate Judge Lloyd